

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE MAY 1, 2006

AMENDED IN SENATE APRIL 26, 2006

SENATE BILL

No. 1849

Introduced by Committee on Business, Professions and Economic Development (Senators Figueroa (Chair), Aanestad, Florez, Morrow, and Simitian)

March 23, 2006

An act to amend Sections ~~6403~~, 8726, 8771, ~~22351~~, ~~22351.5~~, ~~22351.5~~, and 22355, and ~~22452~~ of the Business and Professions Code, and to amend Sections 1815, 12070, and ~~12073~~ of the Insurance Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1849, as amended, Committee on Business, Professions and Economic Development. Professions and vocations: land surveying; ~~records retention~~ *process servers*.

(1) Existing law provides for the licensing and regulation of professional engineers and land surveyors by the Board of Professional Engineers and Land Surveyors in the Department of Consumer Affairs. Existing law specifies that a person practices land surveying when he or she does or offers to do, among other things, certain acts regarding the earth's surface or relative fixed objects and geodetic or cadastral surveying. Existing law makes practicing or offering to practice land surveying without legal authorization a crime.

This bill would revise the acts that constitute the practice of land surveying to include making certain determinations regarding the earth or relative fixed objects by applying geodesy, ~~and~~ *and certifying*

the accuracy of maps or measured survey data. The bill would also revise the definition of geodetic or cadastral surveying.

Because this bill would expand the definition of land surveying, the unauthorized practice or offer to practice of which is a crime, it would impose a state-mandated local program.

~~(2) Existing law authorizes a county officer to destroy any nonjudicial documents or records in his or her custody if authorized by a resolution of the board of supervisors and if the records are, prior to destruction, photographed, microphotographed, or otherwise recorded for public use. Existing law requires any papers or documents to be retained by the county clerk for at least one year before they are destroyed, unless another provision of law requires that they be retained longer.~~

~~Existing law requires legal document assistants and unlawful detainer assistants to be registered with the county clerk in the county in which his or her principal place of business is located and in any other county in which he or she performs acts for which registration is required. Existing~~

~~(2) Existing law requires process servers and professional photocopiers to be registered with the county clerk of the county in which he or she resides or has a principal place of business. Existing law requires a process server, at the time of filing an initial certificate of registration, to also submit 2 completed fingerprint cards for submission to the Department of Justice and the Federal Bureau of Investigation in order to verify that the process server has not been convicted of a felony. Existing law requires the Insurance Commissioner to certify the names of holders of bail licenses to every county clerk of the state and to make up and certify to every county clerk in the state a complete list of all admitted surety insurers.~~

~~This bill would require the county clerk to retain, for a period of at least 3 years, as specified, those registrations and other information provided by legal document assistants, unlawful detainer assistants, process servers, professional photocopiers, and the commissioner. The bill would also require a process server, at the time of filing an initial certificate of registration, to submit a completed Request for Live Scan form instead of the fingerprint cards, and would make related changes.~~

~~Because this bill would impose additional duties on county clerks, it would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6403 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~6403. (a) The application for registration of a natural person~~
4 ~~shall contain all of the following statements about the applicant:~~
5 ~~(1) Name, age, address, and telephone number.~~
6 ~~(2) Whether he or she has been convicted of a felony, or of a~~
7 ~~misdemeanor under Section 6126 or 6127, or found liable under~~
8 ~~Section 6126.5.~~
9 ~~(3) Whether he or she has been held liable in a civil action by~~
10 ~~final judgment or entry of a stipulated judgment, if the action~~
11 ~~alleged fraud, the use of an untrue or misleading representation,~~
12 ~~or the use of an unfair, unlawful, or deceptive business practice.~~
13 ~~(4) Whether he or she has ever been convicted of a~~
14 ~~misdemeanor violation of this chapter.~~
15 ~~(5) Whether he or she has had a civil judgment entered against~~
16 ~~him or her in an action arising out of the applicant's negligent,~~
17 ~~reckless, or willful failure to properly perform his or her~~
18 ~~obligation as a legal document assistant or unlawful detainer~~
19 ~~assistant.~~

1 ~~(6) Whether he or she has had a registration revoked pursuant~~
2 ~~to Section 6413.~~

3 ~~(7) Whether this is a primary or secondary registration. If it is~~
4 ~~a secondary registration, the county in which the primary~~
5 ~~registration is filed.~~

6 ~~(b) The application for registration of a natural person shall be~~
7 ~~accompanied by the display of personal identification, such as a~~
8 ~~California driver's license, birth certificate, or other identification~~
9 ~~acceptable to the county clerk to adequately determine the~~
10 ~~identity of the applicant.~~

11 ~~(c) The application for registration of a partnership or~~
12 ~~corporation shall contain all of the following statements about the~~
13 ~~applicant:~~

14 ~~(1) The names, ages, addresses, and telephone numbers of the~~
15 ~~general partners or officers.~~

16 ~~(2) Whether the general partners or officers have ever been~~
17 ~~convicted of a felony, or a misdemeanor under Section 6126 or~~
18 ~~6127 or found liable under Section 6126.5.~~

19 ~~(3) Whether the general partners or officers have ever been~~
20 ~~held liable in a civil action by final judgment or entry of a~~
21 ~~stipulated judgment, if the action alleged fraud, the use of an~~
22 ~~untrue or misleading representation, or the use of an unfair,~~
23 ~~unlawful, or deceptive business practice.~~

24 ~~(4) Whether the general partners or officers have ever been~~
25 ~~convicted of a misdemeanor violation of this chapter.~~

26 ~~(5) Whether the general partners or officers have had a civil~~
27 ~~judgment entered against them in an action arising out of a~~
28 ~~negligent, reckless, or willful failure to properly perform the~~
29 ~~obligations of a legal document assistant or unlawful detainer~~
30 ~~assistant.~~

31 ~~(6) Whether the general partners or officers have ever had a~~
32 ~~registration revoked pursuant to Section 6413.~~

33 ~~(7) Whether this is a primary or secondary registration. If it is~~
34 ~~a secondary registration, the county in which the primary~~
35 ~~registration is filed.~~

36 ~~(d) The applications made under this section shall be made~~
37 ~~under penalty of perjury.~~

38 ~~(e) The county clerk shall retain these applications for a period~~
39 ~~of three years following the expiration date on the application.~~

~~SEC. 2.~~

SECTION 1. Section 8726 of the Business and Professions Code is amended to read:

8726. A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by making geometric measurements or by applying the principles of mathematics, geodesy, or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(f) Geodetic or cadastral surveying. As used in this chapter, geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, *geodetic control* points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title “land surveyor” or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l).

(n) Certifies the accuracy of maps or measured survey data.

Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

~~SEC. 3.~~

SEC. 2. Section 8771 of the Business and Professions Code is amended to read:

8771. (a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed,

1 to assure, together with monuments already existing, the
2 perpetuation or facile reestablishment of any point or line of the
3 survey.

4 (b) When monuments exist that control the location of
5 subdivisions, tracts, boundaries, roads, streets, or highways, or
6 provide horizontal or vertical survey control, the monuments
7 shall be located and referenced by or under the direction of a
8 licensed land surveyor or registered civil engineer prior to the
9 time when any streets, highways, other rights-of-way, or
10 easements are improved, constructed, reconstructed, maintained,
11 resurfaced, or relocated, and a corner record or record of survey
12 of the references shall be filed with the county surveyor. They
13 shall be reset in the surface of the new construction, a suitable
14 monument box placed thereon, or permanent witness monuments
15 set to perpetuate their location if any monument could be
16 destroyed, damaged, covered, or otherwise obliterated, and a
17 corner record or record of survey filed with the county surveyor
18 prior to the recording of a certificate of completion for the
19 project. Sufficient controlling monuments shall be retained or
20 replaced in their original positions to enable property,
21 right-of-way and easement lines, property corners, and
22 subdivision and tract boundaries to be reestablished without
23 devious surveys necessarily originating on monuments differing
24 from those that currently control the area. It shall be the
25 responsibility of the governmental agency or others performing
26 construction work to provide for the monumentation required by
27 this section. It shall be the duty of every land surveyor or civil
28 engineer to cooperate with the governmental agency in matters of
29 maps, field notes, and other pertinent records. Monuments set to
30 mark the limiting lines of highways, roads, streets or
31 right-of-way or easement lines shall not be deemed adequate for
32 this purpose unless specifically noted on the corner record or
33 record of survey of the improvement works with direct ties in
34 bearing or azimuth and distance between these and other
35 monuments of record.

36 (c) The decision to file either the required corner record or a
37 record of survey pursuant to subdivision (b) shall be at the
38 election of the licensed land surveyor or registered civil engineer
39 submitting the document.

1 ~~SEC. 4. Section 22351 of the Business and Professions Code~~
2 ~~is amended to read:~~

3 ~~22351. (a) The certificate of registration of a registrant who~~
4 ~~is a natural person shall contain the following:~~

5 ~~(1) The name, age, address, and telephone number of the~~
6 ~~registrant.~~

7 ~~(2) A statement, signed by the registrant under penalty of~~
8 ~~perjury, that the registrant has not been convicted of a felony; or,~~
9 ~~if the registrant has been convicted of a felony, a copy of a~~
10 ~~certificate of rehabilitation, expungement, or pardon.~~

11 ~~(3) A statement that the registrant has been a resident of this~~
12 ~~state for a period of one year immediately preceding the filing of~~
13 ~~the certificate.~~

14 ~~(4) A statement that the registrant will perform his or her~~
15 ~~duties as a process server in compliance with the provisions of~~
16 ~~law governing the service of process in this state.~~

17 ~~(b) The certificate of registration of a registrant who is a~~
18 ~~partnership or corporation shall contain the following:~~

19 ~~(1) The names, ages, addresses, and telephone numbers of the~~
20 ~~general partners or officers.~~

21 ~~(2) A statement, signed by the general partners or officers~~
22 ~~under penalty of perjury, that the general partners or officers~~
23 ~~have not been convicted of a felony.~~

24 ~~(3) A statement that the partnership or corporation has been~~
25 ~~organized and existing continuously for a period of one year~~
26 ~~immediately preceding the filing of the certificate or a~~
27 ~~responsible managing employee, partner, or officer has been~~
28 ~~previously registered under this chapter.~~

29 ~~(4) A statement that the partnership or corporation will~~
30 ~~perform its duties as a process server in compliance with the~~
31 ~~provisions of law governing the service of process in this state.~~

32 ~~(c) The county clerk shall retain the certificate for a period of~~
33 ~~three years following the expiration date on the certificate.~~

34 ~~SEC. 5.~~

35 ~~SEC. 3. Section 22351.5 of the Business and Professions~~
36 ~~Code is amended to read:~~

37 ~~22351.5. (a) At the time of filing the initial certificate of~~
38 ~~registration, the registrant shall also submit a completed Request~~
39 ~~for Live Scan form confirming fingerprint submission to the~~
40 ~~Department of Justice and the Federal Bureau of Investigation, in~~

order to verify that the registrant has not been convicted of a felony. The clerk shall utilize the Subsequent Arrest Notification Contract provided by the Department of Justice for notifications subsequent to the initial certificate of registration.

(b) If, after receiving the results of the Request for Live Scan, the clerk is advised that the registrant has been convicted of a felony, the presiding judge of the superior court of the county in which the certificate of registration is maintained is authorized to review the criminal record and, unless the registrant is able to produce a copy of a certificate of rehabilitation, expungement, or pardon, as specified in paragraph (2) of subdivision (a) of Section 22351, notify the registrant that the registration is revoked. An order to show cause for contempt may be issued and served upon any person who fails to surrender a registered process server identification card after a notice of revocation.

~~SEC. 6.~~

SEC. 4. Section 22355 of the Business and Professions Code is amended to read:

22355. (a) The county clerk shall maintain a register of process servers and assign a number and issue an identification card to each process server. The county clerk shall issue a temporary identification card, for no additional fee, to applicants who are required to submit Request for Live Scan forms for background checks to the Federal Bureau of Investigation and the Department of Justice. This card shall be valid for 120 days. If clearance is received from the Federal Bureau of Investigation and the Department of Justice within 120 days, the county clerk shall immediately issue a permanent identification card to the applicant. Upon request of the applicant, the permanent identification card shall be mailed to the applicant at his or her address of record. Upon renewal of a certificate of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The temporary and permanent identification cards shall be $3\frac{3}{8}$ inches by $2\frac{1}{4}$ inches and shall contain at the top the title, "Registered Process Server," followed by the registrant's name, address, registration number, date of expiration, and county of registration. In the case of a natural person, it shall also contain a photograph of the registrant in the lower left corner.

1 ~~SEC. 7. Section 22452 of the Business and Professions Code~~
2 ~~is amended to read:~~

3 ~~22452. (a) The application for registration of a natural person~~
4 ~~shall contain all of the following statements about the applicant:~~

5 ~~(1) Name, age, address, and telephone number.~~

6 ~~(2) He or she has not been convicted of a felony.~~

7 ~~(3) He or she will perform his or her duties as a professional~~
8 ~~photocopier in compliance with the provisions of law governing~~
9 ~~the transmittal of confidential documentary information in this~~
10 ~~state.~~

11 ~~(b) The application for registration of a partnership or~~
12 ~~corporation shall contain all of the following statements about the~~
13 ~~applicant:~~

14 ~~(1) The names, ages, addresses, and telephone numbers of the~~
15 ~~general partners or officers.~~

16 ~~(2) The general partners or officers have not been convicted of~~
17 ~~a felony.~~

18 ~~(3) The partnership or corporation will perform its duties as a~~
19 ~~professional photocopier in compliance with the provisions of~~
20 ~~law governing the transmittal of confidential documentary~~
21 ~~information in this state.~~

22 ~~(c) The county clerk shall retain the application for a period of~~
23 ~~three years following the expiration date on the application.~~

24 ~~SEC. 8. Section 1815 of the Insurance Code is amended to~~
25 ~~read:~~

26 ~~1815. (a) The commissioner shall certify the names of~~
27 ~~holders of bail agents' and bail permittees' licenses and their~~
28 ~~solicitors to every county clerk of the State, together with their~~
29 ~~license numbers and any other information in respect to such~~
30 ~~persons as he considers advisable. He or she shall promptly upon~~
31 ~~termination, for any cause, of any license, notify the respective~~
32 ~~county clerks.~~

33 ~~(b) The county clerk shall retain these records for a period of~~
34 ~~three years.~~

35 ~~SEC. 9. Section 12070 of the Insurance Code is amended to~~
36 ~~read:~~

37 ~~12070. (a) The commissioner shall make up and certify to~~
38 ~~the county clerk of each county of the state a complete list of all~~
39 ~~admitted surety insurers. The list shall set forth:~~

40 ~~(1) The full corporate name of the insurer.~~

1 ~~(2) The name of the state or country under whose laws the~~
2 ~~insurer is organized.~~

3 ~~(3) The date of the certificate of authority issued to the insurer~~
4 ~~to transact surety insurance in this state.~~

5 ~~(b) The county clerk shall retain these records for a period of~~
6 ~~three years.~~

7 ~~SEC. 10. Section 12073 of the Insurance Code is amended to~~
8 ~~read:~~

9 ~~12073. The county clerk shall keep an index or other~~
10 ~~conveniently arranged record that shall show all admitted surety~~
11 ~~insurers as certified to him or her by the insurance commissioner~~
12 ~~and any further information as to those surety insurers as may be~~
13 ~~certified to the county clerk by the commissioner. The county~~
14 ~~clerk shall retain these indexes for a period of three years.~~

15 ~~SEC. 11. No reimbursement is required by this act pursuant~~
16 ~~to Section 6 of Article XIII B of the California Constitution for~~
17 ~~certain costs that may be incurred by a local agency or school~~
18 ~~district because, in that regard, this act creates a new crime or~~
19 ~~infraction, eliminates a crime or infraction, or changes the~~
20 ~~penalty for a crime or infraction, within the meaning of Section~~
21 ~~17556 of the Government Code, or changes the definition of a~~
22 ~~crime within the meaning of Section 6 of Article XIII B of the~~
23 ~~California Constitution.~~

24 ~~However, if the Commission on State Mandates determines~~
25 ~~that this act contains other costs mandated by the state,~~
26 ~~reimbursement to local agencies and school districts for those~~
27 ~~costs shall be made pursuant to Part 7 (commencing with Section~~
28 ~~17500) of Division 4 of Title 2 of the Government Code.~~

29 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
30 ~~Section 6 of Article XIII B of the California Constitution because~~
31 ~~the only costs that may be incurred by a local agency or school~~
32 ~~district will be incurred because this act creates a new crime or~~
33 ~~infraction, eliminates a crime or infraction, or changes the~~
34 ~~penalty for a crime or infraction, within the meaning of Section~~
35 ~~17556 of the Government Code, or changes the definition of a~~
36 ~~crime within the meaning of Section 6 of Article XIII B of the~~
37 ~~California Constitution.~~